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EXAMINER

ROWAN, KURT C

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 01/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/867,908</b>	Applicant(s) <b>MAGUIRE et al.</b>
	Examiner <b>KURT ROWAN</b>	Art Unit <b>3643</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)  Responsive to communication(s) filed on Nov 25, 2002

2a)  This action is **FINAL**.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 1-20 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-20 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

6)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Claim Rejections - 35 U.S.C. § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Wallingford.

The patent to Wallingford shows a fishing net having a handle 1 with a grip end and a net end.

Wallingford shows a retraction mechanism 11 slidably mounted on the handle noting Figure 1.

Wallingford shows flexible net support band 10 having first and second band ends mounted to the retraction mechanism external to the handle. Wallingford shows netting 18 mounted to the support band. Wallingford shows the net support band being exterior to the handle.

### ***Claim Rejections - 35 U.S.C. § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1, 5-8, 14-18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wearing in view of Phillips, and Molloy.

The patents to Wearing and Phillips show landing nets. Wearing shows a handle 3 with a grip end and a net end. Wearing shows a retraction mechanism 20 slidably mounted on the handle. Wearing shows a net support band 40, 40 having first and second band ends each being mounted to the retraction mechanism. Wearing shows netting 5. The net support band is not a hoop shape. The patent to Phillips shows a net having a support band 32 in the shape of a hoop. The patent to Molloy shows a fishing net having support bands 16, 16 mounted to a retraction mechanism 20, 22 external to the handle. Figure 3 shows the net support bands being exterior to the handle. In reference to claims 1, 14, it would have been obvious to provide Wearing with a hoop shaped net support band as shown by Phillips since merely one band is being replaced with another and the function is the same. It would have further been obvious to mount the net support bands exterior to the handle as shown by Molloy since merely one equivalent mounting mechanism is being substituted for another and the function is the same. In reference to claim 5, Wearing shows a T bar 30 mounted to the end of the handle. Wearing shows the T bar orthogonal to the handle and shows a first bar end and a second bar end (not labeled) with a first member and a second member extending therefrom defining first and second receivers 38, 39. Wearing shows the first band extending beyond the first receiver and the second band end extending beyond the second receiver. In reference to claims 8 and 17, Phillips shows the first member and the second member are each a set of rollers 18, 18. In reference to claims 9 and 18,

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Wearing and Phillips shows the net support band to be both resilient and flexible. In reference to claim 10, Wearing discloses that the net support band is composed of aluminum. In reference to claims 15-16, Phillips shows a button 88 as a releasable retention mechanism that is spring biased as at 90 and a receiver hole (not labeled). In reference to claim 20, Wearing shows a first mounting mechanism 20 (left side) and a second mounting mechanism 20 (right side) with the first band end (of band 40 left side) pivotally mounted with respect to the first mounting mechanism and the second band end (of band 40 right side) pivotally mounted with respect to the second mounting mechanism using pins bolts or rivets 29 as shown in Figs. 1 and 4.

5. Claims 1-2, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norris in view of Molloy.

The patent to Norris shows a retractable fishing net having a handle 1 with a grip end and a net end 2. Norris shows a retraction mechanism 8 slidably mounted on the handle and being movable between the grip and the net end. Norris shows a net support band 3 having first and second ends. Norris shows a netting 9. The patent to Molloy shows a fishing net as discussed above. In reference to claim 1, it would have been obvious to provide Norris with the support band being mounted to the retraction mechanism external to the handle with the support band being external to the handle as shown by Molloy since merely one equivalent mounting means is being substituted for another and the function is the same.

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6. Claims 1-4, 9-13, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henson in view of Molloy.

The patent to Henson shows a retractable net having a handle 1, a retraction mechanism 17 slidably mounted on the handle and movable between the grip end and the net end. Henson shows a net support band 10 with a first band end and a second band end. Henson shows netting 15 mounted on the net support band. Henson shows a spring biased button 17 and a receiver hole 16. The patent to Molloy shows a fishing net having a flexible support band 16, a retraction mechanism 20, 22 with the support bands being mounted to the retraction mechanism external to the handle. Molloy shows the net support bands being exterior to the handle. In reference to claim 1, it would have been obvious to provide Henson with the support band being mounted exterior to the handle as shown by Molloy since merely one equivalent mounting means is being substituted for another and the function is the same. Henson shows a single opening but it would have been obvious to employ two openings for multiplied effect. See *In re Harza*, 124 USPQ 378. Henson shows an anchor pin 7 and a hinge 9. Henson shows a net hook 3 coupled to the anchor pin with the net hook extending toward the net end of the handle. The handle includes a net end opening capable of receiving the netting there into.

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***Response to Arguments***

7. Applicant's arguments with respect to claims 1, 14, 19 have been considered but are moot in view of the new ground(s) of rejection. Applicant's response overcomes the rejection under 35 U.S.C. 112, second paragraph.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to KURT ROWAN whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

*Kurt Rowan*

KURT ROWAN

PRIMARY EXAMINER

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January 25, 2003